

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ANTHONY J. LEO, MD, RESPONDENT

No. 02-95-145

FINAL ORDER

BE IT REMEMBERED:

1. That Anthony J. Leo, MD, (the Respondent), was issued license number 23996 to practice medicine and surgery in Iowa on November 28, 1983. The license is valid and will next expire on June 1, 1997.

2. That the Iowa Board of Medical Examiners (the Board) filed a Statement of Charges against the Respondent on October 19, 1995. A hearing was held on the Statement of Charges before a three member panel of the Board on January 8, 1997.

3. That a Findings of Fact, Conclusions of Law, Decision and Order of the Panel (Proposed Decision) was issued on February 17, 1997. On or about February 17, 1997, a copy of the Proposed Decision was sent to the Iowa Attorney General's Office, via LOCAL mail. The Proposed Decision was accepted without further review by the Board on March 6, 1997.

4. That on February 20, 1997, the Proposed Decision was served upon the Respondent via U. S. first class restricted certified mail, return receipt requested..

5. That pursuant to 653 IAC 12.50(29), thirty (30) days having passed and no appeal of the Proposed Decision having been filed by the Respondent or any other party to the proceeding the Proposed Decision became a final order of the Board.

6. That pursuant to pertinent provisions of sections 148.6 and 148.7 of the 1997 Code of Iowa the undersigned, acting on the behalf of the Board, is authorized to enter an Order herein.

THEREFORE IT IS HEREBY ORDERED that the Proposed Decision, a copy of which is attached as Exhibit A, is a **FINAL DECISION** of the Board and the Decision and Order outlined therein is a **FINAL ORDER OF THE BOARD**.

Laura J. Stensrud
Laura J. Stensrud, Vice Chairperson
Iowa Board of Medical Examiners
1209 East Court Avenue
Des Moines, IA 50319-0180
Phone 515-281-5171

3-26-97

Date

c: Theresa O'Connell Weeg, Esq., Assistant Attorney General
David J. Dutton, Esq., Attorney for Respondent
Anthony J. Leo, MD, Respondent
Presiding Administrative Law Judge

DMC/* 03-25-97

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BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE
COMPLAINT AND STATEMENT
OF CHARGES AGAINST

ANTHONY J. LEO, M.D.

Respondent

) DIA NO. 95DPHMB-28
) CASE NO. 02-95-145
)
)
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) DECISION AND ORDER
) OF THE PANEL

TO: ANTHONY J. LEO, M.D.

On October 19, 1995, the Executive Director of the Iowa Board of Medical Examiners (Board) filed a Statement of Charges against Anthony J. Leo, M.D., (Respondent) alleging that beginning in approximately July 1994, and continuing through at least July 1995, the Respondent failed to complete patient records in a timely manner and this failure constituted substandard care, in violation of Iowa Code section 148.6(1), 148.6(2)(g) and (i) and 653 IAC 12.4 (2) "d", (13), (15), and (28).

An Original Notice and Order for Hearing were issued setting the hearing for February 5, 1996. An Answer was filed on November 8, 1995. Several Motions to Continue the hearing were granted, and the hearing commenced on January 8, 1997 at 8:30 a.m. in the second floor conference room, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa. The Respondent appeared and was represented by counsel, David Dutton. The state was represented by Theresa O'Connell Weeg, Assistant Attorney General. The hearing was held before a panel of the Board which included: James Catherine, M.D.; Dale Holdiman, M.D.; and Donna Norman, D.O. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1). However, some of the exhibits, which are identified below, are confidential records, pursuant to Iowa Code sections 272C.6(4), 147.135 and 22.7. The hearing was recorded by a certified court reporter. Margaret LaMarche, Administrative Law Judge, presided and was instructed to prepare this decision of the panel, in accordance with their deliberations.

THE RECORD

The record includes the Complaint and Statement of Charges, the Original Notice, the Order for Hearing, the Answer, Motions to Continue, Orders for Continuance, Motion to Quash Subpoena, Application to Enforce Subpoenas, Response to Motion to Quash, Ruling on Motion to Quash, Motion to Reconsider Ruling, Resistance to Motion to Reconsider, Letter dated 2/20/96 (Dutton to Martino), Request for Oral Argument, Request to Join in Oral Argument, Order

for Hearing on Motion to Reconsider, Ruling on Motion to Reconsider, Appeal to Board from Ruling, Order for Hearing, Ruling of Board and Protective Order, Order for Hearing, the testimony of the witnesses, and the following exhibits:

- State Exhibit A: Letter of Warning, 1/30/92
- State Exhibit B: Complaint Report, 5/2/95
- State Exhibit C: Investigative Report, 8/17/95
- State Exhibit D: Investigative Report, 9/1/95
- State Exhibit E: Letter dated 7/18/95 (Richard to Board)
- State Exhibit F: Memos dated 7/5/94-7/17/95 (Medical Records to Richard) [Confidential, pursuant to Iowa Code sections 147.135 and 272C.6(4)]
- State Exhibit G: Letter dated 7/10/95 (Respondent to Board) and attachments
- State Exhibit H: Discharge Summary, patient FT, pp. 1, 5 [Confidential, pursuant to Iowa Code sections 27.7(2) and 272C.6(4)]
- State Exhibit I: Patient Records, patient FT [Confidential, pursuant to Iowa Code sections 27.7(2) and 272C.6(4)]
- State Exhibit J: Peer Review Report, 4/5/96
- State Exhibit K: Subpoenas
- Respondent Exhibit 1: Letter dated 5/6/96 (Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to Hintz), and attached progress report
- Respondent Exhibit 2: Letter dated 10/11/96 (JCAHO to Respondent)
- Respondent Exhibit 3: Form letter re: untimely discharge summaries
- Respondent Exhibit 4: Letter dated 12/17/96 (Doan to Assistant Attorney General)
- Respondent Exhibit 5: Memo dated 12/5/96 (Medical Staff of People's Hospital to Board)

- Respondent Exhibit 6: Letter dated 1/17/96 (Pedersen to Respondent)
- Respondent Exhibit 7: Medical Record Reports, 1993-1995
- Respondent Exhibit 8: Graph of Average # of Delinquent Records (Average # of Discharges)
- Respondent Exhibit 9: Incomplete Record Statistics, 1993-1995
- Respondent Exhibit 10: Affidavit of Harry Jarvis, dated 5/7/96
- Respondent Exhibit 11: Examples of delinquent medical records of other physicians, and discharge summary by Respondent. [Confidential, pursuant to Iowa Code sections 27.7(2) and 272C.6(4)]
- Respondent Exhibit 12: same as Exhibit 8, more legible copy
- Respondent Exhibit 13: operative report, patient FT [Confidential, pursuant to Iowa Code sections 27.2(2) and 272C.6(4)]

FINDINGS OF FACT

1. The Respondent was issued license no. 23996 to practice medicine and surgery in the state of Iowa on November 28, 1983. The Respondent's license is valid and will next expire on June 1, 1997. The Respondent is a board certified general surgeon, who resides in Oelwein, Iowa. (Board licensing records, Statement of Charges; Testimony of Respondent; State Exhibit G)
2. On January 30, 1992, the Board sent the Respondent an informal letter of warning advising him that patient medical records are considered a part of patient care. The Board further advised the Respondent that incomplete patient records constitute incomplete patient care which is of grave concern to the Board. (State Exhibit A; Testimony of Douglas Brown)
3. Medical students are taught that maintaining accurate and timely medical records which comply with all applicable standards is an important part of medical practice. Medical records, including histories and physicals, operative reports, and discharge summaries, reflect what the physician has done. Failure to timely complete patient records can impair the continuity of patient care, the professionalism of the physician, and hospital licensing. Timeliness standards for medical records are specifically

prescribed by several sources, including the Joint Commission on Accrediting Healthcare Organizations (JCAHO), State and Federal Regulations, and Hospital and Medical Staff By-Laws. (Testimony of Michael Abrams, M.D.; State Exhibit J; Respondent Exhibits 2, 3)

a) The actual number of days allowed to complete a medical record may vary from 14 to 30 days depending upon the type of record and the accreditation of the hospital where the physician is practicing. For example, a hospital accredited by JCAHO must ensure that medical records are completed promptly. The individual hospital, through its medical staff by-laws, defines promptly. (Testimony of Michael Abrams, M.D.; Robert Richard; Marilyn Magnuson; David Coster, M.D.)

b) Failure to comply with the applicable timeliness requirements may result in a particular physician's hospital privileges being suspended, pursuant to hospital or medical staff by laws. In addition, the physician and/or the hospital can be placed at legal risk for lawsuits and the hospital can lose its ability to bill for the physician's services. (Testimony of Michael Abrams, M.D.; Marilyn Magnuson; State Exhibit J)

c) Failure to comply with the applicable timeliness requirements may also result in sanctions being imposed against the hospital from its accrediting body. For example, under JCAHO standards, if a particular hospital has more than fifty percent of its discharge summaries or two percent of its histories and physicals or operative reports considered to be delinquent, the hospital is subject to a sanction. In addition, a hospital could potentially lose its medicare/medicaid funding or its ability to contract with certain insurance groups. (Testimony of Michael Abrams, M.D.; Marilyn Magnuson; Respondent; Respondent Exhibit 1)

4. On May 2, 1995, the Board received an anonymous telephone complaint regarding the Respondent. The complainant alleged that the Respondent had failed to keep up patient charts in a timely manner at People's Memorial Hospital in Independence, Iowa. According to the complainant, the Respondent had a lot of delinquent charts, some as much as one year delinquent. One chart was identified by patient last name and a surgery date of May 2, 1994. At the time of the complaint, the Respondent practiced at People's Hospital fifteen percent of the time and at Oelwein Mercy Hospital eighty-five percent of the time. (Testimony of Douglas Brown; Respondent; State Exhibit B)

5. The Board initiated an investigation. On May 24, 1995, the Board issued a subpoena to the administrator at People's Memorial Hospital, requesting copies of all documentation for the period from January 1994 to the present, which related to delinquent

charts for which the Respondent was responsible. In addition, the Board requested copies of all medical records for the patient identified in the anonymous complaint. The Board investigator also contacted the medical records department at Oelwein Hospital, which reported that the Respondent's record keeping had improved considerably since 1992. (Testimony of Doug Brown; State Exhibit K)

6. On July 18, 1995, nearly eight weeks after the subpoena was served, the Administrator of People's Memorial responded to the subpoena. The Administrator sent copies of monthly memos from the Medical Records Manager concerning incomplete medical records from July 1994 to July 1995. In his cover letter, the Administrator asked the Board to note the Respondent's improvement over the most recent weeks, including his 'zero' delinquency in the prior two weeks. The Administrator noted that the Respondent had worked with the hospital to complete records prior to losing payment for services provided. The Administrator acknowledged that the record keeping was a problem requiring close supervision, but also stated that it was the only difficulty he had experienced with the Respondent, who he described as an excellent physician/surgeon whose commitment, service, and care are unparalleled. The Administrator does not know who filed the complaint against the Respondent, and he does not support the complaint. (Testimony of Douglas Brown; Robert Richard; State Exhibits E, F)

7. Peoples's Hospital provided nineteen memos documenting the number of delinquent medical records attributed to the Respondent for the period from July 1994 through July 1995. Sixteen of the nineteen memos documented more than 30 delinquent medical records attributed to the Respondent. For example, in July 1994, the Respondent had 48 delinquent incomplete medical records. By August 1994 the Respondent had 61 delinquent incomplete medical records. By October 1994, the number had risen to 71 delinquent records. From November 1994 to May 1995 the number of delinquent incomplete medical records attributed to the Respondent ranged from 51-58. By May 30, 1995, the Respondent had 49 delinquent records and the number slowly declined until July 10, 1995, when the Respondent had no delinquent medical records. The number of delinquent medical records did not start to significantly decline until after the Board served its subpoena. (Testimony of Douglas Brown; Robert Richard; State Exhibits F, K)

a) People's Memorial Hospital is licensed for 50 beds, 28 of which are inpatient. The hospital is not accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). Rather, it is surveyed by the Iowa Department of Inspections and Appeals (DIA) which enforces the HCFA (Health Care Financing Administration) and Medicare/Medicaid regulations. All medical records are required to be completed by physicians in a timely manner, as defined by medical staff with hospital board approval. At People's Memorial, the

applicable timeliness standard is that all medical records must be completed within fourteen (14) days. No staff person at People's Memorial has ever had their hospital privileges suspended for delinquent medical records. It is unclear from this record whether People's Memorial Hospital has a procedure in place to temporarily suspend physician's privileges for failure to timely complete medical records. (Testimony of Robert Richard; Richard Myers, M.D.)

b) At 15 days, the medical records are listed as "delinquent." People's Memorial does not bill any services until the medical chart, including the discharge summary and all required signatures, is complete. The Administrator has determined that all of the Respondent's delinquent medical records involved lack of the required signature or the failure to complete the discharge summary. (Testimony of Robert Richard)

c) The Administrator sent the Respondent a copy of the August 29, 1994 delinquent medical records memo, with a handwritten note at the bottom. In his note, the Administrator circled the number of delinquent records (61) and notes that the Respondent's outstanding charts represent nearly \$400,000 in billing, at a cost to the hospital of \$60+ per day in interest. The Administrator further stated that the hospital has tried everything to assist the Respondent, but the number of delinquent charts continues to climb. In his testimony, the Administrator conceded that the Respondent's outstanding billings represented a significant component of the hospital's budget, approximately five percent of its annual income. (Testimony of Robert Richard; State Exhibit F; See also, Respondent Exhibit 4, paragraph one)

d) The Administrator later sent the Respondent a copy of the September 6, 1994 memo, which noted 62 delinquent records, with the following notation, "Just a reminder. Some of these are nearly too old to collect. Again, I ask that you complete all of your charts." Medicare cannot be billed more than one year after the service was rendered. At the hearing, the Administrator testified that he thought very few of the charts were too old to collect. The Administrator's written comment and his testimony reasonably support the conclusion that more than one of the Respondent's delinquent medical records were nearly one year old or older. (Testimony of Robert Richard; Marilyn Magnuson; State Exhibit F)

e) The only delinquent medical record specifically identified by patient and dates involved the delinquent discharge summary for patient FT. FT was admitted to People's Memorial on April 17, 1994. The Respondent performed surgery on April 19, 1994 and prepared a timely operative report. FT was

discharged to the hospital's skilled nursing hospital on May 16, 1994. The Respondent did not dictate the discharge summary until July 3, 1995, more than one year after the patient's discharge. The Respondent explained that the patient subsequently died of cancer while in skilled nursing and never left the hospital. He felt that the discharge summary served no purpose related to patient care. He further testified that the cost to the hospital was much less than the \$120,000 face value of the charges. (Testimony of Robert Richard; Respondent; State Exhibits H, I; Respondent Exhibit 13)

f) The Administrator sent the Respondent a copy of the April 17, 1995 memo which documented 56 delinquent medical records for the Respondent. The Administrator noted on the memo: "I would truly like to meet with you re: the above.. This has gone on way too long, the hospital is compromised because of it, and we have tried every practical way to resolve this..." (Testimony of Robert Richard; State Exhibit F)

g) The Administrator sent the Respondent a copy of the June 12, 1995 memo, noting 30 delinquent medical records, which represented no improvement over the previous week. The Administrator noted on the memo, "... Next week I will be responding to the request for information from the IBME..." In his testimony, the Administrator conceded that he was using the Board's subpoena to encourage the Respondent to complete his records. (Testimony of Robert Richard; State Exhibit F)

h) In a letter to the Board and in his testimony, the Respondent concedes that he has been chronically delinquent in completing discharge summaries and attestation sheet signatures at People's Memorial Hospital. In addition, the Respondent admitted that he had six temporary suspensions for delinquent medical records at Oelwein Mercy Hospital since October 1994. (Testimony of Respondent; State Exhibit G, pp. 6, 13)

8. Although they are less critical to patient care than history and physicals or operative reports, discharge summaries can impact continuity of patient care. The Respondent and two other specialists suggested that the discharge summary merely reiterates the patient record and that it is used solely for billing purposes. This suggestion is contradicted by the testimony of the state's expert, by Respondent's Exhibit 3, which specifically notes that further care may rely on the discharge summary, and by the experience of the primary care physicians on the hearing panel, who do refer to and rely on discharge summaries in rendering care to their patients. Indeed, upon questioning by the panel, one of the Respondent's witnesses conceded that there may be cases where the discharge summary is important to patient care. He claimed,

however, that all relevant information could also be retrieved from the patient chart, requiring only slightly more time of the physician. (Testimony of Michael Abrams, M.D.; Respondent; David Coster, M.D.; Harlan Rosenberg, M.D.; State Exhibit J; Respondent Exhibit 3)

9. Many physicians in Iowa have had delinquent medical records, especially delinquent discharge summaries. However, the majority of the physician witnesses conceded that it is unusual for a physician to be regularly out of compliance with timeliness standards. None of the physicians testifying on behalf of the Respondent had reviewed his actual record of delinquent medical records. A medical records director testified that of the over 200 physicians on the staff at the hospital where she worked, only one had a delinquency approaching one year, thereby jeopardizing Medicare payment of the bill. (Testimony of Michael Abrams, M.D.; State Exhibit G; David Coster, M.D.; Richard Myers, M.D.; Harlan Rosenberg, M.D.; Respondent; Respondent Exhibits 7, 11, and 12)

10. The Respondent offers several explanations for his delinquent medical records. The Respondent cites to his pending contract dispute and litigation with Oelwein Mercy Hospital, both as potential motivation for someone to file the anonymous complaint against him and because it has demanded his time and energy on a regular basis since July 1994. The Respondent points out that he is an extremely busy surgeon and is continuously on call. Finally, the Respondent and several other witnesses testified that the Respondent's medical records, once completed, are extremely thorough and well organized. The Respondent testified that his discharge summaries are more thorough than those of other physicians and are time consuming to prepare. The Respondent testified that he always completes histories and physicals and operative reports in a timely manner. He considers the discharge summary to be unrelated to patient care and therefore less important. Once he was behind in his discharge summaries, it was difficult to catch up. The Respondent would make an effort to complete ten or fifteen delinquent records one month, only to have ten or fifteen new delinquencies appear. He has been current in his medical records since July 1995. (Testimony of Respondent; Robert Richard; Richard Myers, M.D.; David Coster, M.D.; Harlan Rosenberg, M.D.; State Exhibit G; Respondent Exhibit 13)

11. Letters supporting the Respondent and his professionalism were submitted by the Chair of the Board of Trustees of People's Memorial Hospital and by its medical staff. In his letter, the Chair of the Board of Trustees stated that while the Respondent's incomplete records have delayed receipt of payment in the past, the overall contribution of the Respondent to the medical and financial viability of the hospital greatly outweighed any loss that the hospital may have incurred. (Respondent Exhibits 4, 5)

CONCLUSIONS OF LAW

1. Iowa Code section 148.6 (1995) provides in relevant part:

148.6 Revocation.

1. The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars.

2. Pursuant to this section, the board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

...

- g. Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, ... in which proceeding actual injury to a patient need not be established;...

...

2. 653 IAC 12.4 provides in relevant part:

653-12.4(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 12.2(272C), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

...

- 12.4(13)** Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, ... in which proceeding actual injury to a patient need not be established;...

...

- 12.4(28)** Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code sections...148.6.

3. The preponderance of the evidence established that the Respondent violated Iowa Code section 148.6(2)(g)(1995) and 653 IAC 12.4(13) and (28), when he was repeatedly delinquent in completing large numbers of medical records from July 1994 to July 1995. These large numbers of delinquent records for the continuous period of one year constituted a repeated failure to conform to the

minimal standard of acceptable and prevailing practice of medicine and surgery.

The Respondent does not deny that he had large numbers of delinquent medical records. Rather, he argues that there is no applicable minimal standard for the completion of medical records, in general, and discharge summaries and attestation signatures, in particular. The Respondent argues that this is so because timely medical records do not relate to patient care, late medical records are a common problem among physicians in Iowa, and many other physicians are as delinquent or more delinquent than the Respondent. The panel rejects these arguments.

Medical record keeping is the professional responsibility of the treating physician and is part of the practice of medicine. Medical students are taught the importance of timely and accurate medical records which comply with all relevant standards. Physicians are expected to comply with the timeliness requirements imposed on them by the facilities in which they have privileges. Timely and complete medical records enhance patient care, and in some cases could be critical to continuity of care. In addition, timely medical records are required by the agencies which accredit medical facilities, serve a legal purpose in the event of lawsuits against the physician or the hospital, and provide a necessary basis for billing of services. The timely completion of medical records is the professional responsibility of the treating physician.

In Eaves v. Board of Medical Examiners, 467 N.W.2d 234, 236 (Iowa 1991), the Iowa Supreme Court discussed the applicability of Iowa Code section 148.6(2)(g), and noted that it had previously recognized that a certain degree of indefiniteness is necessary in regulating certain matters to avoid unduly restricting the applicability of the prescribing rule. (citing to Pottawattamie County v. Iowa Dep't of Env'tl. Quality, 272 N.W.2d 448, 453 (Iowa 1978)) The Court further stated that regulation of the medical profession requires flexibility, and noted that, as the Oregon Supreme Court has recognized, "[t]he limits between good and bad professional conduct can never be marked off by a definite line of cleavage." (quoting with approval from In re Mintz, 233 Or. 441, 448, 378 P.2d 945, 948 (1963).) "It would be impossible to catalog all of the types of professional misconduct." Eaves, supra, at 236.

Iowa Code section 148.6(2)(g) (1995) specifically provides that it is not necessary to show actual injury to a patient in order to establish a violation. Although there was no evidence that the Respondent's multiple failures to timely complete medical records negatively impacted the care of his patients, the failure to comply with timeliness requirements does have the potential to negatively impact patient care, particularly continuity of care. Moreover, if

the percentage of delinquent medical records at a particular hospital is high enough, that hospital can potentially lose accreditation or eligibility for reimbursement. Such a result would negatively impact the availability of medical care for an entire community.

The applicable time frame for the timely completion of medical records is provided through hospital and medical staff by-laws. Many hospitals have by-laws which provide for the temporary suspension of privileges for those physicians who have a given number of delinquent medical records. The existence of timeliness standards and the enforcement mechanism of suspension of privileges support the conclusion that the timely completion of medical records is recognized as part of the acceptable practice of medicine.

The Respondent admits that his privileges were temporarily suspended on six occasions at Oelwein Mercy Hospital since October 1994. At People's Memorial, where the Respondent had large numbers of delinquent medical records for the continuous period of one year, the Administrator employed methods other than suspension of privileges to persuade the Respondent to comply with timeliness standards. The numerous communications from the Administrator to the Respondent establish that the Respondent's medical record delinquencies were unacceptable in both numbers and duration. The ability to bill for services was at risk in more than one case, which indicates that more than one record was nearly a year overdue.

While the occasional failure to timely complete a medical record may be a common problem among physicians in Iowa, it is not common for a physician to continuously have large numbers of delinquent medical records over long periods of time. Such practice is neither acceptable, nor is it the prevailing practice of medicine.

In January 1992, the Respondent received an informal letter of warning from the Board which specifically advised him that patient medical records are considered a part of patient care and incomplete records constitute incomplete care. Despite this warning, and numerous intervention attempts by the hospital administrator, by July 1994 the Respondent was delinquent in his completion of a very large number of medical records and he continued to have large numbers of delinquent records for the period of one year.

It is the Respondent's professional responsibility to ensure that he does not assume care for patients if he cannot render complete care, in accordance with the acceptable and prevailing minimum standards, including the applicable standards for timely record keeping. For approximately one year, from July 1994 to July 1995, the Respondent continuously and repeatedly failed to comply with acceptable and prevailing minimum standards for timely medical

record keeping. The Respondent has violated Iowa Code section 148.6(2)(g)(1995) and 653 IAC 12.4(13) and (28).

4. 653 IAC 12.3 provides:

Discretion of the board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating circumstances or other countervailing considerations.
4. Number of prior violations or complaints.
5. Seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.

In determining the appropriate sanction for the Respondent's violation, the panel considered several of the above cited factors. This case solely involves the Respondent's failure to timely complete medical records. In addition, the particular types of records involved, discharge summaries and attestation signatures, are less critical to patient care than other types of medical records, such as histories and physicals and operative reports. Moreover, the Respondent has addressed the timeliness of his record keeping and has been current in his record keeping since July 1995. For these reasons, the panel has determined that the violation will be sufficiently addressed by the Board's issuance of a Citation and Warning.

ORDER

IT IS THEREFORE ORDERED, that if this proposed decision of the panel becomes a final decision, that the Respondent, Anthony J. Leo, M.D., shall be issued the following Citation and Warning:

CITATION

1. The Respondent has been issued license number 23996 to practice medicine and surgery in the state of Iowa.
2. The Iowa Board of Medical Examiners has jurisdiction in this matter pursuant to Iowa Code chapters 17A, 147, 148, and 272C.
3. The Iowa Board of Medical Examiners, following a disci-

plinary hearing, found the Respondent had violated Iowa Code section 148.6(2)(g)(1995) and 653 IAC 12.4(13), when he repeatedly failed to complete numerous patient medical records in a timely manner.

WARNING


1. The Iowa Board of Medical Examiners warns the Respondent that he is responsible for complying with the statutes and regulations governing the practice of medicine and surgery in the state of Iowa.
2. Further violations of statutes or regulations by the Respondent will result in more severe disciplinary sanctions.
3. This Citation and Warning shall become a part of Respondent's permanent record with the Iowa Board of Medical Examiners and is a public record.

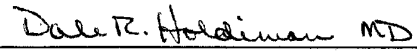
In accordance with 653 IAC 12.50(29), a proposed decision becomes a final decision unless appealed to the Board by a party adversely affected by serving a notice of appeal on the executive director within thirty (30) days after service of this proposed decision. The Board may also review a proposed decision on its own motion.

IT IS FURTHER ORDERED, in accordance with 653 IAC 12.51, that the Respondent shall pay a disciplinary hearing fee of \$75.00. In addition, the Respondent shall pay any costs certified by the executive director and reimbursable pursuant to subrule 12.51(3). All fees and costs shall be paid in the form of a check or money order payable to the state of Iowa and delivered to the department of public health, within thirty days of the issuance of a final decision.

Dated this 17 day of Feb., 1997.

THE PANEL:


James Caterine, M.D.


Dale Holdiman, M.D.


Donna Norman, D.O.

cc: David Dutton
P.O. Box 810
Waterloo, IA 50704

Theresa O'Connell Weeg
Assistant Attorney General
Department of Justice
Hoover Building
(LOCAL)

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

IN THE MATTER OF THE)	DIA. NO. 95DPHMB-28
STATEMENT OF CHARGES)	CASE NO. 02-95-145
AGAINST)	
)	
ANTHONY J. LEO, M.D.)	RULING OF BOARD
)	AND PROTECTIVE ORDER
Respondent)	

On January 4, 1996, the Respondent served a subpoena on Covenant Medical Center requesting production of:

Copies of all monthly, quarterly, or annual reports regarding physicians incomplete records for the years 1993 through 1995.

A Motion to Quash, filed by Covenant on January 15, 1996, was granted by an administrative law judge on February 2, 1996. A Motion to Reconsider was filed on February 16, 1996, oral arguments were heard, and a subsequent Ruling On Motion To Reconsider reversed the prior ruling quashing the subpoena, based upon a finding that the Respondent had sufficiently demonstrated that the requested records were necessary to his defense. Covenant Medical Center appealed this ruling to the Board of Medical Examiners, who heard oral arguments on May 16, 1996.

The following members of the Board heard and considered the motion: James Catherine, M.D.; Eddie DeHaan, M.D.; Donna Norman, D.O.; Teresa Mock, M.D.; Allen Zagoren, D.O.; and Mary Hodges, Public Member. Covenant Medical Center was represented by John R. Walker, Jr. The Respondent was represented by David Dutton. The State was represented by Theresa O'Connell Weeg.

IT IS THEREFORE ORDERED that the prior ruling of the administrative law judge, issued April 4, 1996, is hereby AFFIRMED.

IT IS FURTHER ORDERED that a protective order is hereby issued which restricts the scope of the subpoena to statistical reports maintained by the hospital, that are not physician specific. The Board does not consider such statistical reports to constitute "peer review records," pursuant to Iowa Code section 147.135. Any reports regarding specific physicians constitute "peer review records" and are not subject to subpoena, pursuant to Iowa Code section 147.135.

DIA No. 95DPHMB-28
Page 2

Dated this 16th day of May, 1996.

Teresa Ann Mock MD.
Teresa Ann Mock, MD
Secretary

cc: John R. Walker, Jr.
620 Lafayette St., P.O. Box 178
Waterloo, IA 50704

David Dutton
P.O. Box 810
Waterloo, IA 50704

Theresa O'Connell Weeg
Assistant Attorney Genral
Department of Justice
Hoover Building
(LOCAL)

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) DIA NO. 95DPHMB-28
) CASE NO. 02-95-145
)
)
) RULING ON MOTION
) TO RECONSIDER ORDER
) QUASHING SUBPOENA
)

95 APR -5 PM 4:13
IA. BOARD OF MED. EXAMINERS

On February 2, 1996, a Motion to Quash Subpoena was granted by the undersigned administrative law judge. On February 16, 1996, the Respondent filed a Motion to Reconsider. Covenant Medical Center filed a Resistance to the Motion to Reconsider on February 20, 1996. On March 8, 1996 the Motion to Reconsider was set for oral argument by telephone conference call. The telephone hearing was rescheduled due to a conflict by one of the attorneys.

Oral arguments were heard on the motion by telephone conference call on April 1, 1996. David Dutton appeared for the Respondent. John Walker, Jr. appeared for Covenant Medical Center. Theresa Weeg appeared for the state of Iowa.

In this case, the Respondent seeks to subpoena copies of all monthly, quarterly or annual reports regarding physicians incomplete records for 1993. As stated in the original ruling, the Board's subpoena power extends to the production of professional records, books, papers, correspondence and other records, whether or not privileged or confidential under law, which are deemed necessary as evidence in connection with a disciplinary hearing. Iowa Code section 272C.6(3)(1995). For the purposes of this ruling, it is assumed that the records sought by the Respondent qualify as "confidential records."

The prior ruling concluded that the Respondent had not established that the confidential records he seeks to subpoena are necessary as evidence in his disciplinary hearing. In support of his motion to reconsider, the Respondent urges that the records are necessary and relevant. The Respondent has been charged with failing to complete patient records in a timely manner from July 1994 to July 1995 and that such failure constitutes substandard care. The Respondent asserts that it is crucial to a fair hearing to disclose the existing practice of physicians within the state of Iowa as to the filing of timely medical records since actual practice is entirely relevant and probative on the issue of standard of care. In addition, the Respondent urges that the Board has a duty to uniformly enforce its statutes and rules, and he is trying to determine whether there is uniformity of enforcement.

Covenant Hospital argues that the applicable standard of care is typically established through expert testimony, and the failure of others to conform to the prescribed standard does not constitute a defense. In addition, Covenant Hospital suggests that the Respondent may have access to this type of information through less burdensome means, such as statistics maintained by the Board.

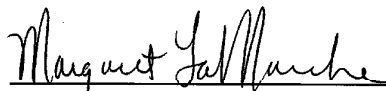
Where an act is not specifically prescribed or prohibited by Board rule or statute, actual physician practice may be relevant to determining the applicable standard of care, if, as alleged by the Respondent, that practice is widely known and has not typically resulted in disciplinary action. I am unaware of any statistics kept by the Board concerning physician's completion of patient records. At best, the Respondent could obtain copies of past disciplinary orders for similar violations. While the Respondent could offer anecdotal or opinion evidence on physicians' practice regarding completion of patient records, such evidence may be less effective or persuasive than actual records of their practice. The Respondent has sufficiently demonstrated that the requested records are necessary to his defense.

As noted by the state of Iowa, if the subpoena is enforced, Covenant Hospital may request a protective order to prevent the Respondent from redisseminating any information disclosed pursuant to the subpoena.

ORDER

IT IS THEREFORE ORDERED, that the prior ruling quashing the subpoena issued to Covenant Medical Center is REVERSED.

Dated this 4th day of April, 1996.



Margaret LaMarche
Administrative Law Judge for the
Iowa Board of Medical Examiners
Iowa Department of Inspections and Appeals
Appeals Division
Lucas State Office Building-Second Floor
Des Moines, Iowa 50319
(515) 274-3867

95DPHMB-28

Page 3

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Executive Hills West
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BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

96 MAR 18 PM 3:43

FILE

I.A. BOARD OF MED. EXAMINERS

IN THE MATTER OF THE
COMPLAINT AND STATEMENT
OF CHARGES AGAINST

ANTHONY J. LEO, M.D.


Respondent

) DIA NO. 95DPHMB-28
) CASE NO. 02-95-145
)
)
) ORDER CONTINUING
) TELEPHONE HEARING
)

An Order was issued setting a telephone hearing on a Motion to Reconsider for March 21, 1996. The motion requested the undersigned to reconsider the prior ruling quashing a subpoena. The attorney for Covenant Medical Center filed a Motion to Continue because he will be out of town on the day scheduled for the telephone hearing. The Motion to Continue is GRANTED.

By agreement of the parties and attorney for Covenant, the oral hearing on the Motion to Reconsider will be heard by telephone on April 1, 1996 at 9:00 a.m. The attorneys should confine their arguments to ten minutes each. Further arguments, if necessary, may be submitted prior to the hearing in writing, with copies to counsel. Attorneys shall contact the undersigned with a telephone number where they may be reached, if it is other than the number appearing on their office letterhead.

Dated this 15th day of March, 1996.


Margaret LaMarche
Administrative Law Judge for the
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95DPHMB-28

Page 2

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BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF IOWA

96 FEB -6 PM 3:25
IA. BOARD OF MED. EXAMINERS

IN THE MATTER OF THE
COMPLAINT AND STATEMENT
OF CHARGES AGAINST

ANTHONY J. LEO, M.D.

Respondent

) DIA NO. 95DPHMB-28
) CASE NO. 02-95-145
)
)
) RULING ON MOTION
) TO QUASH SUBPOENA
)
)

On January 17, 1996, Covenant Medical Center filed a Motion to Quash Subpoena in the above-captioned case. According to the Motion to Quash, the subpoena, which was dated January 4, 1996, requested Covenant Medical Center to produce:

Copies of all monthly, quarterly or annual reports regarding physicians incomplete records for the years 1993 through 1993.

Covenant Medical Center asserts that the documents requested contain personal and confidential information regarding physicians who are not parties to the above captioned proceedings. Assurances of confidentiality were made by Covenant to medical center staff with regard to these records. Covenant Medical Center further asserts that the practices of other physicians is not relevant nor probative on the issues before the Board regarding the Respondent.

Iowa Code section 272C.6(3) provides, in relevant part:

...A subpoena issued under the authority of a licensing board may compel the attendance of witnesses and the production of professional records, books, papers, correspondence and other records, whether or not privileged or confidential under law, which are deemed necessary as evidence in connection with a disciplinary hearing.

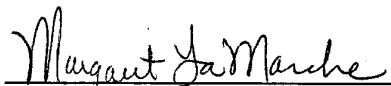
On January 25, 1996 the Respondent filed an Application to Enforce Subpoenas. This Application clarifies that subpoenas were issued to six hospitals, requesting the same records as listed above. The Respondent also attached a letter from an attorney representing Allen Hospital, which indicates their intention to resist the subpoena. This letter clarifies that the subpoenas requested records from 1993-1995.

The Application to Enforce states: "The documents in question are important to the Respondent's defense of the charges against him..." No further explanation of the relevance of the documents

was provided. The Statement of Charges alleges that beginning in approximately July 1994, and continuing through at least July 1995, the Respondent failed to complete patient records in a timely manner and that failure constitutes substandard care.

Based on the information available to the undersigned, including a review of the Statement of Charges and the Respondent's Answer, it does not appear that the subpoenaed records are necessary as evidence in connection with this disciplinary hearing. Therefore, the Motion to Quash is GRANTED.

Dated this 2nd day of February, 1996.



Margaret LaMarche
Administrative Law Judge for the
Iowa Board of Medical Examiners
Iowa Department of Inspections and Appeals
Appeals Division
Lucas State Office Building-Second Floor
Des Moines, Iowa 50319

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BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF IOWA

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

ANTHONY J. LEO, MD, RESPONDENT

No. 02-95-145

STATEMENT OF CHARGES

COMES NOW Ann M. Martino, PhD, Executive Director of the Iowa Board of Medical Examiners (the Board), on October 19, 1995, and at the direction of the Board files this Statement of Charges against Anthony J. Leo , MD (the Respondent), a physician licensed pursuant to Chapter 147 of the Code of Iowa and alleges:

1. That James D. Collins, Jr., MD, Chairperson; Laura J. Stensrud, Vice Chairperson; Edra E. Broich, Secretary; James M. Catherine, MD; Eddie D. DeHaan, MD; Mary C. Hodges; Dale R. Holdiman, MD; Teresa A. Mock, MD; Donna M. Norman, DO; and Roger F. Senty, DO, are the duly appointed and qualified officers and members of the Board.

2. That the Respondent was issued license number 23996 to practice medicine and surgery in Iowa on November 28, 1983.

3. That the Respondent's license is valid and will next expire on June 1, 1997.

4. That in January 1992 the Board issued an informal Letter of Warning to the Respondent advising him that incomplete patient records constitute incomplete care.

5. That beginning in approximately July 1994, and continuing through at least July 1995, the Respondent failed to complete patient records in a timely manner.

6. That the Respondent's failure to maintain patient records in a timely manner constitutes substandard care.

7. That the Board is authorized to take disciplinary action against the Respondent pursuant to the provisions of sections 148.6(1), 148.6(2), 148.6(2)g and 148.6(2)i of the 1995 Code of Iowa and 653 IAC 12.4, 12.4(2), 12.4(2), 12.4(2)d, 12.4(13), 12.4(15), and 12.4(28) , which state in whole or in part:

148.6(1) - The medical examiners, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set forth in section 147.55, chapter 272C, or this subsection.

148.6(2) - Pursuant to this section, the Board of medical examiners may discipline a licensee who is guilty of any of the following acts or offenses:

148.6(2)g - Being guilty of a ... repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery ...

148.6(2)i - ... [R]epeated violation of lawful rule or regulation adopted by the board ...

653-12.4 - Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 12.2, including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

12.4(2) - Professional incompetency. Professional incompetency includes but is not limited to:

12.4(2)d - A ... repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery ... in Iowa.

12.4(13) - Being guilty of a ... repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery ...

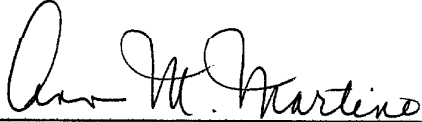
12.4(15) - ... [R]epeated violation of lawful rule or regulation adopted by the board.

12.4(28) - Violating any of the grounds for the revocation or suspension of a license listed in Iowa Code sections ... 148.6.

STATEMENT OF CHARGES
Anthony J. Leo, MD
No. 02-95-145

WHEREFORE the undersigned charges that pursuant to the provisions of the Iowa Code sections and Iowa Administrative Code rules outlined herein, the Respondent is subject to disciplinary action by the Board. The undersigned prays that the Board enter an order fixing a time and place for hearing the Statement of Charges. The undersigned further prays that the Board, upon final hearing, enter its findings of fact and decision to revoke, suspend or otherwise discipline the license to practice medicine and surgery issued to the Respondent and for such other relief as the Board deems just in the premises.

IOWA BOARD OF MEDICAL EXAMINERS



ANN M. MARTINO, PhD, Executive Director
1209 East Court Avenue
Des Moines, IA 50319-0180
Telephone: (515) 281-5171

DMC/* 10-15-95

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